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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 RORY O'REILLY, et al., ) Case No. CV 12-4365-PJW  
11 Plaintiffs, )  
12 v. ) FINDINGS OF FACT AND  
13 UNITED STATES OF AMERICA, ) CONCLUSIONS OF LAW  
14 Defendant. )  
15

16 I.

17 FINDINGS OF FACT

18 1. This Federal Tort Claims Act ("FTCA") action stems from a  
19 bicycle/automobile accident that occurred on East Camino Cielo Road in  
20 Santa Barbara, California at approximately 5:00 p.m. on February 8,  
21 2011. East Camino Cielo Road generally runs in an east/west direction  
22 through the Los Padres National Forest. It is a narrow--15 feet  
23 across at the site of the accident--curvy, steep road, reaching a  
24 height of 4,000 feet at the summit. There are no markings on the road  
25 to delineate the center line or the edge of the road. The road is  
26 popular among amateur and professional cyclists who ride and train in  
27 the Santa Barbara area. According to Plaintiff Rory O'Reilly, he had  
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1 ridden on this road more than 100 times before the accident without  
2 incident.

3       2. At the time of the accident, O'Reilly was riding his bike  
4 downhill in the eastbound lane of East Camino Cielo. O'Reilly, who  
5 was 55 at the time, was accompanied by two teenaged, "junior" riders  
6 he was coaching. O'Reilly and the junior riders were traveling at  
7 about 25 m.p.h. About a minute into their descent from the summit,  
8 O'Reilly and the junior riders encountered a truck being driven in the  
9 opposite direction on East Camino Cielo by United States Forest  
10 Service employee Warren Johnson, Jr. The truck Johnson was driving  
11 was owned by the Forest Service and Johnson was acting within the  
12 course and scope of his employment as a Forest Service worker at the  
13 time. Another employee, Nicholas Riley, was a passenger in the truck.

14       3. When O'Reilly first spotted the truck, it was about 200 feet  
15 away from him, traveling in the westbound lane of East Camino Cielo at  
16 a speed of about 25 m.p.h. The truck then began to turn in a westerly  
17 direction, following the road. Due to the angle of the road (sloping  
18 upward), the time of day (early evening), and the orientation of the  
19 road (west by northwest), when Johnson turned to the westerly  
20 direction, he was blinded by the setting sun. As a result, Johnson  
21 was unable to see in front of him. Unfortunately, however, he  
22 continued to proceed at 25 m.p.h. As he did, he caused the truck to  
23 drift from the right side of the road to the left side of the road,  
24 blocking O'Reilly's path down East Camino Cielo. Johnson's abrupt  
25 change of course left O'Reilly unable to react in time and he collided  
26 with the Forest Service truck, hitting the front bumper, sailing on  
27 top of the hood, and then toppling to the ground. The first time  
28 Johnson and Riley saw O'Reilly was when he landed on the truck's hood.

1           4.     The impact of the collision fractured O'Reilly's scapula,  
2 clavicle, eight ribs, and femur. He also suffered a punctured lung.  
3 O'Reilly experienced excruciating pain from these and the other  
4 injuries he sustained in the accident. It took the ambulance one hour  
5 to reach the scene of the accident and take O'Reilly away.

6           5.     O'Reilly was transported to Santa Barbara Cottage Hospital  
7 for treatment. The following day, he underwent surgery to repair his  
8 shoulder and knee fractures. The surgeon placed surgical screws in  
9 his knee and a surgical plate on top of his clavicle to stabilize the  
10 bones and promote healing. O'Reilly remained at the hospital from  
11 February 8th to the 15th. He was then transferred to the hospital's  
12 neighboring convalescent center, where he stayed until February 24th,  
13 when he was discharged to his home.

14          6.     O'Reilly was confined to a wheelchair for about three months  
15 after the accident. He required constant care, much of which was  
16 provided by his wife, co-Plaintiff Laura Jewitt-O'Reilly. After he  
17 was able to get out of the wheelchair, he walked with a cane for  
18 several more months while his body healed.

19          7.     About six months after the accident, on August 5, 2011,  
20 O'Reilly underwent a second surgery in which the hardware was removed  
21 from his shoulder and knee because it was causing him discomfort. The  
22 surgeon also performed a manipulation of his shoulder in order to  
23 loosen some of the muscle and ligament tightness that had developed as  
24 a result of the limited use of the shoulder. During the year  
25 following the August 2011 procedure, O'Reilly continued to see his  
26 doctor for orthopedic evaluations. O'Reilly was also treated by a  
27 chiropractor. Despite this treatment, he continued to experience pain  
28 and discomfort in his knee and shoulder.

1           8.     On June 4, 2012, O'Reilly underwent a left knee arthroscopy  
2 with synovectomy and chondroplasty. In this procedure, the surgeon  
3 examined O'Reilly's condylar notch and surrounding cartilage and  
4 shaved away scar tissue. The doctor noted the presence of a one  
5 millimeter "step-off" at the location of O'Reilly's condyle fracture.  
6 O'Reilly's doctor believes that, as a result of the step off, he may  
7 need a total knee replacement in the next 10 years and would likely  
8 need a second one 20 years from now.

9           9.     At the recommendation of his doctor, O'Reilly sought a  
10 second opinion regarding future treatment from Dr. James Tibone at the  
11 Kerlan-Jobe clinic in Los Angeles. On October 31, 2012, O'Reilly  
12 visited Dr. Tibone, who examined him and reviewed the medical records,  
13 including x-rays and MRIs. In Dr. Tibone's opinion, O'Reilly does not  
14 need any additional surgery and believes that additional surgeries  
15 will not provide any relief. Dr. Tibone recommended instead that  
16 O'Reilly wear a knee brace.

17           10.    The government's medical expert agrees with Dr. Tibone. He  
18 does not believe that O'Reilly will require a knee replacement and  
19 believes further that, even if he did, a second knee replacement would  
20 not be required. In fact, he, too, does not believe that Plaintiff  
21 will be helped by surgery to his knee or shoulder. The Court accepts  
22 the views of Dr. Tibone and the government's medical expert and  
23 concludes that total knee replacement surgery is not warranted.

24           11.    On July 2, 2013, Dr. Donald Fareed performed arthroscopic  
25 surgery on O'Reilly's shoulder. During that procedure, Dr. Fareed  
26 discovered the presence of a labral tear in O'Reilly's left shoulder,  
27 which was not present in 2011 or 2012. The surgery helped alleviate  
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1 some of O'Reilly's shoulder pain. He testified that he has scheduled  
2 a similar procedure for his knee for the week following the trial.

3 12. O'Reilly's bicycle, valued at \$3,490, was totaled in the  
4 accident. He also incurred miscellaneous medical expenses in the  
5 amount of \$523.25.

6 13. Between the time of the accident and the date of the trial,  
7 O'Reilly incurred medical costs totaling \$216,248.39. The Court finds  
8 that these medical expenses were reasonable and necessary and were the  
9 direct result of the accident and the injuries he suffered in the  
10 accident. The Court also finds that O'Reilly will need additional  
11 medical care, including the procedure scheduled with Dr. Fareed for  
12 the week after the trial and additional orthopedic evaluations/  
13 treatment and chiropractic treatment for the rest of his life.

14 14. Prior to the accident, O'Reilly worked as a finish carpenter  
15 and a cycling coach, earning on average about \$38,187 per year (based  
16 on earnings of \$42,894 in 2009 and \$33,380 in 2010). Seven months  
17 after the accident, O'Reilly attempted to go back to work as a finish  
18 carpenter but found that he was unable to perform the duties required  
19 of that job. The Court finds that O'Reilly is unable to perform the  
20 job of finish carpenter any longer due to the impairments he suffers  
21 from the accident.

22 15. The parties stipulated that O'Reilly's past lost wages  
23 totaled \$82,180.00. His future lost earnings total \$295,262 (based on  
24 total lost wages of \$427,697 dollars less \$132,435 he could earn at a  
25 minimum wage job during the eight-year period between the trial and  
26 his 65th birthday).

27 16. Clearly, O'Reilly has and will continue to have physical  
28 limitations caused by the injuries he suffered in the accident. For

1 example, he cannot squat, kneel, climb, stand for long periods of  
2 time, or lift heavy objects above his head. He will also experience  
3 pain and suffering, both physical and mental. For example, O'Reilly  
4 was an avid and passionate world-class cyclist before the accident--a  
5 former World Champion and Olympian--but will never have the ability to  
6 compete at the level he was competing before the accident.

7 17. O'Reilly's wife, Laura Jewitt-O'Reilly, is also a plaintiff  
8 in this action and has sued for loss of consortium. The Court finds  
9 that, as a direct result of the accident and the injuries her husband  
10 suffered, Laura Jewitt-O'Reilly suffered a loss of consortium. Her  
11 relationship with her husband was materially altered immediately after  
12 the accident due to his injuries and continues to be affected.

## 13 II.

### 14 CONCLUSIONS OF LAW

15 1. Jurisdiction is vested in this court pursuant to the FTCA,  
16 28 U.S.C. §§ 1346(b) and 2671-2680.

17 2. Venue is proper in this court because the accident occurred  
18 in this district and the O'Reillys reside in this district. 28 U.S.C.  
19 § 1402(b).

20 3. Under the FTCA, the Court applies California negligence law  
21 in analyzing Plaintiffs' claims and the government's defenses. See 28  
22 U.S.C. §§ 1346(b) and 2674.

23 4. In order to prevail on his negligence claim, O'Reilly must  
24 prove by a preponderance of the evidence that Johnson was negligent in  
25 the operation of the government truck and that Johnson's negligence  
26 caused O'Reilly to be injured. See Cal. Civil Code § 1714(a)  
27 (California's general negligence statute); *Ladd v. County of San*  
28 *Mateo*, 12 Cal. 4th 913, 917-918 (1996) (reciting fundamental elements

of negligence: duty, breach, causation, damages). The Court concludes that Johnson was negligent in failing to stop his truck when he was blinded by the sun and could not see where he was going. As a result of not being able to see where he was going, Johnson caused the truck to drift over to O'Reilly's side of the road, blocking his path and causing the bike and the truck to collide. As is also clear, O'Reilly was injured as a result of Johnson's negligence.

5. The Court has considered the possibility that O'Reilly's conduct contributed to the accident and concludes that there is no evidence of that. See Cal. Civil Code § 1431.1(c) (adopting California voters' Proposition 51, which statutorily ensures that "defendants in tort actions shall be held financially liable in closer proportion to their degree of fault"); *Li v. Yellow Cab Co.*, 13 Cal. 3d 804, 812-13 (1975) (replacing "all-or-nothing" system of tort liability with comparative fault system "under which liability for damage will be borne by those whose negligence caused it in direct proportion to their respective fault").

6. The Court awards damages to O'Reilly as follows:

i.	Past Medical Expenses	\$216,248.39
ii.	Past Pain and Suffering	
	(February 8, 2011 until today)	\$250,000
iii.	Past Lost Wages	\$82,180
iv.	Future Medical Expenses	\$75,000
v.	Future Pain and Suffering	\$200,000
vi.	Future Lost Wages	\$295,262
vii.	Property Damage (bike and miscellaneous	
	medical-related expense)	<u>\$4,013.25</u>
	Total Damages	\$1,122,703.64

